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17

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

20 MARIA PEREZ on behalf of herself and all
others similarly situated

21 Plaintiff,
22

23 v.
24

25 MIDLAND FUNDING, LLC

26 Defendant.
27

28 ///

Case No. CV 10-01916 LHK

**STIPULATION AND ~~PROPOSED~~
ORDER TO STAY PROCEEDINGS
AND ADMINISTRATIVELY CLOSE
FILE PENDING RULING FROM THE
CALIFORNIA SUPREME COURT**

1 WHEREAS, in the Joint Case Management Conference Statement filed by the parties on
2 May 21, 2013, defendant Midland Funding, LLC indicated that it intended to file a motion
3 to compel arbitration of this matter.

4 WHEREAS, the arbitration clause which appears on the purchase contract relating to the
5 motor vehicle which plaintiff Maria Perez purchased is substantially similar to the
6 arbitration clause in the standard motor vehicle purchase contracts used throughout
7 California for a number of years.

8 WHEREAS, several state appellate courts, as well as several federal courts have ruled on
9 the issue of whether the arbitration clause in such standard contracts is unconscionable
10 and unenforceable, with varying results.

11 WHEREAS, the matter of *Sanchez v. Valencia Holding Company*, 135 Cal.Rptr.3d 19
12 (2011)(review granted) is currently pending in the California Supreme Court, Supreme
13 Court Case No. S199119. In that case, review was granted of an appellate court decision
14 which held that the standard motor vehicle purchase contract arbitration clause was
15 unconscionable. The petition for review was granted on March 21, 2012, and the case has
16 been fully briefed since November 13, 2012. On April 25, 2012, the Supreme Court
17 granted calendar preference to the case pursuant to California Code of Civil Procedure §
18 1291.2.

19 WHEREAS, the parties believe that the Supreme Court's decision in *Sanchez v. Valencia*
20 *Holding Company* may provide clarification concerning the enforceability of the
21 arbitration clause present in plaintiff's purchase contract.

22 WHEREAS, the parties agree that judicial economy would be best served by placing a
23 stay on this litigation pending the California Supreme Court's ruling in *Sanchez v.*
24 *Valencia Holding Company*.

1 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** between
2 Plaintiff MARIA PEREZ and Defendant MIDLAND FUNDING LLC that;

3 1) This litigation is stayed pending the California Supreme Court's ruling in *Sanchez v.*
4 *Valencia Holding Company*;

5 2) The court may administratively close the file; and

6 3) When a ruling is made in *Sanchez v. Valencia Holding Company*, the parties shall
7 submit a stipulation to lift the stay and re-open this litigation.
8

9
10 GORDON & REES LLP

11 Dated: May 30, 2013

12 /s/
Tara Martin,
13 Attorney for Defendant Midland Funding, LLC
14

15 DUPRE LAW FIRM, P.C.
16 LAW OFFICE OF WILLIAM E. KENNEDY
CHAVEZ & GERTLER, LLP
17 KEMNITZER, BARRON & KRIEG

18 Dated: May 30, 2013

19 /s/
William E. Kennedy,
20 Attorney for Maria Perez and the Proposed Class
21

22 **Attestation**

23 I hereby attest that concurrence in the filing of this document has been obtained
24 from each of the other signatories.
25

26 Dated: May 30, 2013

27 /s/
William E. Kennedy,
28 Attorney for Maria Perez and the Proposed Class

ORDER

PURSUANT TO STIPULATION, IT IS ORDERED AS FOLLOWS:

- 1) This litigation is stayed pending the California Supreme Court's ruling in *Sanchez v. Valencia Holding Company*, California Supreme Court Case No. 199119;
- 2) the court shall administratively close the file; and
- 3) when a ruling is made in *Sanchez v. Valencia Holding Company*, the parties shall submit a stipulation to lift the stay and re-open this litigation.

DATED: May 31, 2013



LUCY H. KOH
UNITED STATES DISTRICT JUDGE